FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION 2448 OF 2004
IN
FIRST APPEAL NO. 836 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

CORAM: A.S. OKA, J.
DATE : 17th August, 2004.

P.C.:-

1. Heard Shri Apte appearing for the Appellant/Applicant. Shri Apte submitted that the vehicle which was involved in the accident is owned by the Appellant and is validly insured with the insurance company. He submitted that mandatory requirement of issuing notice to the insurance company as prescribed by the provisions of the Motor Vehicle Act, 1988 is not complied with and therefore the award is bad in law.

2. I have considered the submissions. The primary liability to pay compensation is of the owner of the motor vehichle, i.e. the Appellant herein. On the basis of contract of insurance and the provisions of

the said Act of 1988, the Insurance Company may be liable to satisfy the award which may be passed against the Appellant who is the owner of the vehicle. However, the Appellant being the owner is liable to pay compensation. The Appeal is admitted as effect of non-service of notice by the Tribunal on the insurance company will have to be examined. However, till the disposal of the Appeal, the Respondents who are the claimants will have to be permitted to withdraw the amount deposited as per the award without furnishing security. The award passed by the Tribunal is under Section 163(A) of the said Act of 1988 and the amount of compensation is fixed as per the structured formula prescribed by the second schedule. In view of this I pass the following order :

(i) There will be interim relief in terms of prayer clause (a) subject to Appellant depositing the entire amount due and payablee as per the impugned judgment and award with the Tribunal within a period of eight weeks from today.

(ii) If amount is deposited by the Appellants, the Respondents

will be entitled to withdraw the said amount without furnishing any security. The deposit of the amount and the withdrawal thereof by the Respondents will be subject to final result of the Appeal.

(iii) In case the amount is not deposited within the stipulated period, the said interim relief will stand vacated automatically without reference to this Court.

(iv) This order will not prevent the Applicant from taking steps for recovery of the compensation amount from the insurance company on the basis of alleged contract of insurance.

. CA is disposed of in above terms.

. All concerned parties to act on authenticated copy of this order.

JUDGE